**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929**

**MACA.No. 186 of 2007(D)**
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**OPMV.1255/2004 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM**
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**APPELLANT/3RD RESPONDENT**
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**NATIONAL INSURANCE CO.LTD.,**
**GURUVAYUR, REPRESENTED BY ITS MANAGER,**
**MOTOR THIRD PARTY OFFICE, M.G.ROAD, ERNAKULAM.**

**BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)**

**RESPONDENTS/CLAIMANTS:**
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1. **GANGARAM NARASAPPA BODKE,**
   **WALASANGI COLONY, AHMEDPUR TALUK,**
   **LATHUR DISTRICT, MAHARASHTRA.**

2. **JALSABAI GANGARAM BODKE,**
   **W/O.GANGARAM NARASAPPA BODKE,**
   **WALASANGI COLONY, AHMEDPUR TALUK,**
   **LATHUR DISTRICT, MAHARASHTRA.**

3. **MOHAN GANGARAM BODKE,**
   **S/O.GANGARAM NARASAPPA BODKE,**
   **WALASANGI COLONY, AHMEDPUR TALUK,**
   **LATHUR DISTRICT, MAHARASHTRA.**

4. **SURESH GANGARAM BODKE,**
   **S/O.GANGARAM NARASAPPA BODKE,**
   **WALASANGI COLONY, AHMEDPUR TALUK,**
   **LATHUR DISTRICT, MAHARASHTRA.**

5. **VINOD GANGARAM NARASAPPA BODKE,**
   **S/O.GANGARAM NARASAPPA BODKE,**
   **WALASANGI COLONY, AHMEDPUR TALUK,**
   **LATHUR DISTRICT, MAHARASHTRA.**

**6. SUJATHA GANGARAM NARASAPPA BODKE,**
**D/O.GANGARAM NARASAPPA BODKE,**
**WALASANGI COLONY, AHMEDPUR TALUK,**
**LATHUR DISTRICT, MAHARASHTRA.**

**BY ADV. SRI.SHEJI P.ABRAHAM R1 TO R6**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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M.A.C.A.No.186 OF 2007

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Dated 18th June, 2007

**JUDGMENT**

**Koshy,J.**

A boy aged 19, who was engaged in selling Bombay sweets in Shoranur, met with an accident on 12.10.04 while he was riding his bicycle through the road for selling sweets. His parents, brothers and sisters claimed compensation of Rs.4,00,000/=. The total amount awarded was Rs.3,46,700/= with 6% interest and cost of Rs.4,000/=. The appellant insurance company questions only quantum of compensation as it was found that the accident occurred due to the negligence of the driver of the vehicle insured by the appellant insurance company. The Tribunal found that even though the deceased was a seller of sweets, his daily income was not proved. However, Tribunal assessed that Rs.100/= can be his daily income and for 25 days he must have been working and, therefore, in the absence of data, Rs.2,500/= was fixed as the monthly income. We also note that in 1994, when second schedule was framed, notional income of Rs.1,250/= per month was fixed even for a non-earning person. Here, the accident occurred only in 2004. Even though the deceased was aged 19 at the time of accident, he was working and, therefore, Rs.2,500/= fixed cannot be taken as arbitrary so as to interfere in the award. Tribunal

has taken 11 as the multiplier. Mother of the deceased was aged 51 at the time of the accident and taking guidance from the second schedule, if the age is above 50 but not exceeding 55, the apt multiplier is 11. If we take the age of the deceased, the multiplier will be 16. But, it has been held by the Apex Court that even though second schedule should be taken as a guideline for calculating compensation under Section 166 also, though claim is under Section 163A, while calculating compensation under Section 166, lesser of multiplier applicable to the victims and dependents should be taken. Considering the age of the mother, 11 is the apt multiplier. So, no interference is required. Even though Rs.2,500/= was taken as notional income, taking into account future prospects, the Tribunal has assessed Rs.2000/= as monthly loss of dependency. The Apex Court in ***General Manager, KSRTC*** v. **Susamma Thomas** ((1994) 2 SCC 176) held that while calculating compensation for youngsters, future prospects also has to be taken into account. The Tribunal has then taken Rs.2,000/= as monthly loss of dependency and calculated compensation, especially considering the low multiplier taken. We see no ground to interfere with the compensation granted for loss of dependency. For loss of love and affection Rs.35,000/= was awarded and for loss of estate and other

non-pecuniary loss Rs.35,000/= was awarded. When a youngster dies, normally, loss of estate is not granted and if second schedule is taken into account, loss of estate that can be given is only Rs.2,500/=. With regard to loss of love and affection, we are of the opinion that only Rs.15,000/= need be granted. So, Tribunal has awarded Rs.52,500/= more. The Tribunal has not awarded any amount for pain and suffering. He died in the hospital after struggling for life for five days. We award Rs.10,000/= towards pain and suffering. Even then the Tribunal has awarded Rs.42,500/= in excess. Thus, total amount payable as compensation is only Rs.3,04,200/= against Rs,3,46,700 awarded. We are not interfering with the cost as well as rate of interest awarded by the Tribunal.

The appeal is partly allowed.

**J.B.KOSHY**
**JUDGE**

**K.P.BALACHANDRAN**
**JUDGE**

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